

Amendment No. 1 to SB1452

Yager
Signature of Sponsor

AMEND Senate Bill No. 1452*

House Bill No. 1959

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 7, is amended by adding Sections 2 through 17 of this act as a new, appropriately designated chapter.

SECTION 2. This chapter shall be known and may be cited as the "Tourism Development Authority Act".

SECTION 3.

(a)

(1) Any municipality or county incorporated or existing under the laws of Tennessee, or any combination of any municipality or county incorporated or existing under the laws of Tennessee has authority to establish a Tourism Development Authority, hereafter referred to as "authority", within the area of the local governments establishing the authority. The establishment of such an authority may also include the participation of a local chamber of commerce in such manner and to the extent authorized by the local governments creating the authority.

(2)

(A) It is declared that any tourism development authority created pursuant to this chapter:

(i) Is a public body corporate and politic, performing a public function on behalf of its creating municipalities;

(ii) Is a public and governmental body acting as an agency and instrumentality of the municipality or county or any

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combination of any municipality or county with respect to which the authority is organized; and

(iii) That the acquisition, operating and financing of any project by such authority is declared to be for a public and governmental purpose and a matter of public necessity.

(B) All property and revenues of the authority or any interest in the property and revenues and the income from the properties and all bonds issued by the authority and the income from the bonds shall be exempt from all state, county and municipal taxation.

(C) For purposes of the Tennessee Securities Act of 1980, compiled as title 48, chapter 2, part 1, bonds issued by the authority shall be deemed to be securities issued by a public instrumentality or a political subdivision of the state of Tennessee.

(b)

(1) An authority shall come into existence under the terms of this chapter when any government votes or a combination of governments specified in subsection (a) each vote by majority vote of its governing body to establish an authority. Evidence of such authorization shall be proclaimed and countersigned by the presiding officer of each participating county or municipality and certified by such officer to the secretary of state.

(2) The governing bodies of all governments voting to become members of an authority shall indicate their willingness to appropriate sufficient funds to provide for the initial administration of the authority as a part of the authorization process.

(3) The creating municipality or municipalities are authorized to provide funding and appropriate money to the authority in such manner as directed by the governing bodies, which may include appropriation from the general fund or from an occupancy tax imposed by the municipality or municipalities to the extent authorized by the governing body of each such municipality.

(c) As used in this act:

(1) "Board" means the board of directors of the authority;

(2) "Governing body" means the legislative body of the creating municipality or municipalities;

(3) "Municipality" means any municipality or county incorporated or existing under the laws of Tennessee, or any combination of any municipality or county incorporated or existing under the laws of Tennessee;

(4) "Project" means any facilities or group of facilities to be owned or controlled (either through ownership, lease or an easement) by the authority or other governmental entity and that is available for use by the public including, without limitation, visitor centers, recreational facilities such as greenways and trails, and other governmentally-owned tourist attractions, provided, that any such project shall be determined by the authority to promote tourism in the municipality or municipalities creating the authority; and

(5) "Tourism" means the planning and conducting of programs of information and publicity designed to attract tourists, visitors and other interested persons from outside the area of the municipality or municipalities creating the authority and also encouraging and coordinating the efforts of other public and private organizations or groups of citizens to publicize the facilities and attractions of the area, and shall also include the acquisition, construction, and remodeling of facilities useful in the attraction and promoting of tourists, conventions, and recreational business.

SECTION 4.

(a) The authority shall have the following powers, together with all powers incidental to the following powers or necessary for the performance of those powers, to:

(1) Sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;

(2) Acquire, whether by purchase, construction, exchange, gift, lease, or otherwise, and design, plan, site, improve, repair, extend, equip, furnish, operate and maintain one (1) or more projects, which projects shall be within the jurisdictional boundaries of the governmental entities establishing the authority, including all real and personal properties that the board of directors of the authority may deem necessary in connection with the projects and regardless of whether or not any such projects shall then be in existence, and including the power to demolish any existing structures as may be on sites acquired when such structures are not needed for the project;

(3) To appoint agents and employees, describe their qualifications and fix their compensation;

(4) Operate, maintain, manage, and enter into contracts for the operation, maintenance and management of any project undertaken, and to make rules and regulations with regard to such operation, maintenance and management;

(5) Employ, contract with, fix the compensation of, and discharge engineering, architectural, legal, financial and other professional experts, consultants, agents and employees as may be necessary to carry out the purposes of this chapter and to provide for the proper construction, operation and maintenance of any project;

(6) Lease, rent and contract for the operation of all or any part of any project, and charge and collect rent for the project and terminate any such lease upon the failure of the lessee to comply with any of the obligations of the lease and include in or exclude from any such lease provisions that the lessee shall

have the option to renew the term of the lease for such period or periods and at such rent as shall be determined by the board of directors;

(7) Lease such space in a project as from time to time may not be needed for related purposes to any other person, corporation, partnership or association for such purposes as the board of directors may determine are in the best interest of the authority or will help facilitate the purposes for which the authority was created, and upon such terms and in such manner as the board may determine;

(8) Fix and collect fees and charges for the use of any and all of the projects of the authority;

(9) Make contracts, including without limitation contracts with service providers;

(10) Sell, exchange, donate, and convey any or all of its properties, whenever the board of directors shall find any such action to be in furtherance of the purposes for which the authority was organized;

(11) Procure and enter into contracts for any type of insurance or indemnity against loss or damage to property from any cause, including loss of use and occupancy, against death or injury of any person, against employer's liability, against any act of any member, officer or employee of the authority in the performance of the duties of such person's office or employment or any other insurable risk, as the board of directors, in its discretion, may deem necessary;

(12) Accept donations, contributions, revenues, capital grants or gifts from any individuals, associations, public or private corporations, and municipalities, the State of Tennessee or the United States, or any agency or instrumentality of the State of Tennessee or the United States, for or in aid of any of the purposes of this act and enter into agreements in connection with the donations, contributions, revenues, capital grants or gifts;

(13) Obtain such licenses, permits, approvals and accreditations as the authority deems necessary in connection with any project;

(14) Borrow money from time to time and, in evidence of any obligation incurred, issue and, pursuant to Section 12, sell its revenue bonds in accordance with this chapter and the applicable provisions of title 9, chapter 21, in such form and upon such terms as its board of directors may determine, payable out of any revenues of the authority, including grants or contributions or other revenues specifically provided to the authority, for the purpose of financing the cost of any project and refund and refinance, from time to time, bonds so issued and sold, as often as may be deemed to be advantageous by the board of directors;

(15) Mortgage and pledge as security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection with the bonds, any or all of the projects or any part or parts of the projects, whether then owned or thereafter acquired; and

(16) Exercise all powers expressly given herein and establish bylaws and make all rules and regulations not inconsistent with this chapter, deemed expedient for the management of the affairs of the authority.

(b) The authority shall not be required to have a seal.

SECTION 5.

(a) The authority shall have a board of directors in which all powers of the authority shall be vested. Such board shall consist of any number of directors, no fewer than five (5), a majority of whom shall be duly qualified electors of and taxpayers in the creating municipality or municipalities as this term is defined in Section 3(c).

(b) The creating municipality or municipalities, if more than one (1) municipality has jointly created an authority, shall determine the number of directors, whether and to what extent the members of the local legislative bodies

and the local chamber of commerce shall serve as members, the manner each director shall be appointed or elected and the manner of filling vacancies.

(c) The directors of the authority shall serve without compensation, except for reimbursement of necessary expenses incurred by directors in performance of their duties. All directors shall be residents of the county for which the authority is acting.

(d)

(1) The term of each director on the authority shall be for six (6) years, provided that any director shall continue to serve beyond the end of the director's term until the director's successor has been appointed. At the first organizational meeting of the authority, the creating municipality shall establish the terms of the initial directors so that the directors serve staggered terms and an approximately equal number of directors have terms that expire in each year.

(2) If a creating municipality had established a tourism board, upon approval of the municipality or all municipalities if more than one (1) municipality was a part of establishing a tourism board, the board of the tourism board may become the initial board of the authority in such manner as directed by the creating municipality or municipalities.

(3) The authority shall provide to each governing body the initial terms assigned to each director.

(4) The term of a director is renewable, subject to reappointment.

SECTION 6. A majority of the board of the authority shall constitute a quorum for the transaction of any business. Unless a greater number or percentage is required, or otherwise by state law, the vote of a simple majority of the directors of the authority present at any meeting at which a quorum is present shall be the action of the authority. To the extent permitted by applicable law, the authority may permit any or all directors to participate in an annual, regular or special meeting by, or conduct the meeting through

the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

SECTION 7. Public notice of all meetings, whether annual, regular or special, of the authority, shall be given in accordance with the open meetings law compiled in Tennessee Code Annotated, title 8, part 44.

SECTION 8.

(a) The officers of the authority shall consist of a chairman, vice-chairman, secretary, treasurer, and such other officers as the authority shall from time to time deem necessary or desirable. The offices of secretary and treasurer may be held by the same person. (i) The chairman shall preside at all meetings of the directors, discharge all the duties which devolve upon a presiding officer, and perform such other duties as may be prescribed by the authority.

(b) The vice-chairman shall perform such duties as may be assigned to the vice-chairman. In the case of the death, disability or absence of the chairman, the vice-chairman shall perform and be vested with all the duties and powers of the chairman. The secretary shall keep the record of the minutes of the proceedings in each meeting and shall have custody of all books, records, and papers of the authority, except such as shall be in charge of the treasurer or such other person or persons authorized to have custody and possession thereof by a resolution of the authority. The treasurer shall keep account of all money received and disbursed and shall deposit such funds with a bank or trust company which is a member of the Federal Deposit Insurance Corporation or invest such funds in investments that would be eligible investments for a county.

(c) Other officers shall perform such duties as shall be designated by the authority.

(d) Each of such officers may be removed at any time by the affirmative vote of a majority of the board of the authority.

SECTION 9. The initial officers of the authority shall be elected by the board of directors at its first meeting following the appointment of the directors or as soon thereafter as may be convenient. Each initial officer shall hold office until the first annual meeting of the authority, which shall be held in January following the year the authority is created and thereafter until his or her successor has been duly elected and qualified. Subsequent officers of the corporation shall be elected at the annual meeting of the authority. Each such officer shall be elected for a one-year term but shall continue to hold office until his or her successor has been duly elected and qualified. The annual meeting of the authority shall be held in January of each year.

SECTION 10. The board of directors of the authority shall cause an annual audit to be made of the books and records of the authority. Such audits shall be prepared in accordance with generally accepted governmental auditing standards and such audits shall meet any minimum standards prescribed by the comptroller of the treasury of the state for public entities such as the authority. Such audits shall be prepared by certified public accountants. Before the commencement of each fiscal year, the authority shall adopt a budget for such fiscal year and file such budget with the municipalities.

SECTION 11.

(a) For the purpose of aiding and cooperating with the authority, each municipality may assign or loan any of its employees, including its engineering staff and facilities, and may provide necessary office space, equipment, and other facilities for the use of the authority, as the governing body of such municipality shall approve.

(b) Each municipality may make donations of property, real or personal, or cash grants to the authority, and may loan funds to the authority in such amount or amounts as it may deem proper and appropriate in aiding the authority to accomplish its purpose.

(c) Each municipality may convey real property or personal property to the authority, and the authority is authorized to accept such a conveyance.

SECTION 12.

(a) The authority shall have power and is authorized to issue its bonds in accordance with this chapter and in accordance with the Local Government Public Obligations Law, compiled in title 9, chapter 21, and for such purposes the bonds shall be treated as revenue obligations of the authority under this chapter, in order to finance:

(1) The costs of any project;

(2) The payment of the costs of issuance of such bonds, including underwriter's discount, financial advisory fee, preparation of the definitive bonds, preparation of all public offering and marketing materials, advertising, credit enhancement, and legal, accounting, fiscal and other similar expenses;

(3) Reimbursement of the authority for moneys previously spent by the authority for any of the foregoing purposes; and

(4) The establishment of reasonable reserves for the payment of debt service on such bonds, for repair and replacement of any project, or for such other purposes as the board shall deem necessary and proper in connection with the issuance of any bonds and operation of any project for the benefit of which the financing is being undertaken.

(b) The authority shall have the power and is hereby authorized to issue its bonds to refund and refinance outstanding bonds of the authority heretofore or hereafter issued or lawfully assumed by the authority; provided that in accordance with title 9, chapter 21, the authority shall request a report on any proposed refunding from the office of the comptroller. The proceeds of the sale of the bonds may be applied to:

(1) The payment of the principal amount of the bonds being refunded and refinanced;

(2) The payment of the redemption or tender premium thereon, if any;

(3) The payment of unpaid interest on the bonds being refunded, including interest in arrears, for the payment of which sufficient funds are not available, to the date of delivery or exchange of the refunding bonds;

(4) The payment of fees or other charges incident to the termination of any interest rate hedging agreements, liquidity or credit facilities, or other agreements related to the bonds being refunded and refinanced;

(5) The payment of interest on the bonds being refunded and refinanced from the date of delivery of the refunding bonds to maturity or to, and including, the first or any subsequent available redemption date or dates on which the bonds being refunded may be called for redemption;

(6) The payment of the costs of issuance of the refunding bonds, including underwriter's discount, financial advisory fee, preparation of the definitive bonds, preparation of all public offering and marketing materials, advertising, credit enhancement, and legal, accounting, fiscal and other similar expenses, and the costs of refunding the outstanding bonds, including the costs of establishing an escrow for the retirement of the outstanding bonds, trustee and escrow agent fees in connection with any escrow, and accounting, legal and other professional fees in connection therewith; and

(7) The establishment of reserves for the purposes set forth in subdivision (a)(4) above.

Refunding bonds may be issued to refinance and refund more than one (1) issue of outstanding bonds, notwithstanding that such outstanding bonds may have been issued at different times. The principal proceeds from the sale of refunding bonds may be applied either to the immediate payment and retirement

of the bonds being refunded or, to the extent not required for the immediate payment of the bonds being refunded, to the deposit in escrow with a bank or trust company to provide for the payment and retirement at a later date of the bonds being refunded.

(c) No bonds shall be issued hereunder unless authorized to be issued or assumed by resolution of the board or directors of the authority. Bonds authorized to be issued hereunder may be issued in one (1) or more series, may bear such date or dates, mature at such time or times, not exceeding forty (40) years from their respective dates, bear interest at such rate or rates, payable at such time or times, be in such denominations, be in such form, either coupon or registered, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide. Bonds may be issued for money or property at competitive or negotiated sale for such price or prices as the board of directors, or its designee, shall determine. The authority may enter into such agreements in connection with the issuance of any bonds as its board of directors may approve, including without limitation, credit agreements and bond purchase agreements.

(d) Bonds may be repurchased by the authority out of any available funds at such price as the board of directors shall determine, and all bonds so repurchased shall be cancelled or held as an investment of the authority as the board of directors may determine.

(e)

(1) All bonds issued by the authority shall be payable solely out of the revenues of the authority, including tax revenues, as may be designated by the board of directors of the authority.

(2) The principal of and interest on any bonds issued by the authority shall be secured, as may be designated by the board of

directors of the authority, by a pledge of the tax revenues allocable to the authority, by a pledge of the authority's rights under agreements, leases and other contracts, or by a mortgage or deed of trust covering all or any part of the projects from which the revenues so pledged may be derived. The proceedings under which the bonds are authorized to be issued and any such pledge agreement or mortgage or deed of trust may contain any agreements and provisions respecting the maintenance of the projects covered by the bonds, the fixing and collection of rents for any portions of projects leased by the authority to others, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, all as the board of directors shall deem advisable and not in conflict with the provisions of this act. Each pledge, agreement, or mortgage or deed of trust made for the benefit or security of any of the bonds of the authority shall continue effective until the principal of and interest on the bonds for the benefit of which the pledge, agreement, or mortgage or deed of trust were made shall have been fully paid. In the event of default in such payment or in any agreement of the authority made as a part of the contract under which the bonds were issued, whether contained in the proceedings authorizing the bonds or in any mortgage or deed of trust executed as security for the bonds, such payment or agreement may be enforced by suit, mandamus, the appointment of a receiver in equity or by foreclosure of any such mortgage or deed of trust, or any one (1) or more of such remedies.

(f) Bonds and notes of the authority shall be executed in the name of the authority by such officers of the authority and in such manner as the board of directors may direct. If so provided in the proceedings authorizing the bonds, the facsimile signature of any of the officers executing such bonds may appear on the bonds in lieu of the manual signature of such officer.

(g) Any bonds and notes of the authority may be sold at public or private sale to the extent authorized for local governments, for such price and in such manner and from time to time as may be determined by the board of directors of the authority to be most advantageous, and the authority may pay all expenses, premiums and commissions that its board of directors may deem necessary or advantageous in connection with the issuance of the bonds.

SECTION 13. No municipality shall in any event be liable for the payment of the principal of or interest on any bonds of the authority or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever that may be undertaken by the authority, and none of the bonds of the authority or any of its agreements or obligations shall be construed to constitute an indebtedness of any municipality within the meaning of any constitutional or statutory provision whatsoever.

SECTION 14. Any municipality is authorized to aid or otherwise provide assistance to the authority, including entering into leases of projects, or parts of projects with an authority, for such term or terms and upon such conditions as may be determined by the governing body of such municipality, notwithstanding and without regard to the restrictions, prohibitions, or requirements of any other law, whether public or private.

SECTION 15. All leases, contracts, deeds of conveyance, or instruments in writing executed by the authority, shall be executed in the name of the authority by the chairman of the authority, or by such other officer as the board of directors of the authority, by resolution, may direct.

SECTION 16. As a public body, no part of the net earnings of the authority remaining after payment of its expenses shall inure to the benefit of any individual, firm or corporation, except that in the event the board of directors of the authority shall determine that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the authority, then any net earnings of the authority thereafter accruing shall be paid to the municipality or municipalities with respect to

which the authority was organized; provided, that nothing contained in this section shall prevent the board of directors from transferring all or any part of its properties in accordance with the terms of any lease entered into by the authority.

SECTION 17. Whenever the board of directors of the authority, by resolution, determines that there has been substantial compliance with the purposes for which the authority was formed, and all bonds theretofore issued and all obligations theretofore incurred by the authority have been fully paid, then the members of the board of directors shall thereupon execute and file for record in the office of the secretary of state a certificate of dissolution reciting such facts and declaring the authority to be dissolved. Upon the filing of such certificate of dissolution, the authority shall stand dissolved, the title to all funds and properties owned by it at the time of such dissolution shall vest in the municipality and if created by a combination of any municipality and county, in the manner approved by such entities, and possession of such funds and properties shall forthwith be delivered to such municipality. Upon dissolution of the authority, any of its assets shall be distributed as shall be directed by the municipality or by agreement of the municipalities but in no event shall such costs be distributed to any person other than a governmental entity.

SECTION 18. This act shall take effect upon becoming a law, the public welfare requiring it.